

SENATE BILL 2975
By Gilbert

AN ACT to amend Tennessee Code Annotated, Title 55, Chapter 10, relative to the consequences of driving under the influence of an intoxicant and refusing to submit to certain tests to determine the alcohol or drug content of a person's blood or breath.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 55, Chapter 10, is amended by adding the following as a new Part 9:

Section 55-10-901. As used in this part unless the context clearly requires otherwise:

- (1) "Department" means the Tennessee department of safety;
- (2) "Driver license" means any license to operate a motor vehicle issued under Tennessee law;
- (3) "Law enforcement officer" refers to any law enforcement officer who has satisfactorily completed a recruit training program approved by the Tennessee peace officer standards and training commission;
- (4) "License" means any driver license or any other license or permit to operate a motor vehicle issued under, or granted by, Tennessee law including:
 - (A) Any temporary license or instruction permit;
 - (B) The privilege of any person to drive a motor vehicle whether or not the person holds a valid license;

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(C) Any nonresident's operating privilege as defined herein;

(5) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by Tennessee law pertaining to the operation by that person of a motor vehicle, or the use of a vehicle owned by that person, in Tennessee;

(6) "Revocation" means the termination by formal action of the department of a person's license or privilege to operate a motor vehicle on the highways, which terminated license or privilege shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon by the department after the expiration of the applicable period of time prescribed in Tennessee Code Annotated, Section 55-10-806; and

(7) "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province or territory of Canada.

Section 55-10-902.

(a) The department shall revoke the license of any person upon its determination that the person drove or was in actual physical control of a motor vehicle while the alcohol concentration in the person's blood or breath was one-tenth of one percent (0.10%) or more. For purposes of this part, alcohol concentration shall mean either grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath.

(b) The department shall make an administrative review and a determination of these facts on the basis of the report of a law enforcement officer required in Tennessee Code Annotated, Section 55-10-903, and this determination shall be final unless a hearing is requested and held under Section 55-10-909.

(c) The determination of these facts by the department is independent of the determination of the same or similar facts in the adjudication of any criminal

charges arising out of the same occurrence. The disposition of those criminal charges shall not affect any revocation under this section.

Section 55-10-903.

(a) A law enforcement officer who charges a person with a violation of Tennessee Code Annotated, Section 55-10-401, shall, within five (5) working days, forward to the department a sworn report of all information relevant to the enforcement action, including information which adequately identifies the violator, a statement of the officer's grounds for belief that the person violated Tennessee Code Annotated, Section 55-10-401, and a copy of the citation, driver license, and receipt for temporary permit. A copy of the completed notice of revocation form, a copy of any completed temporary permit form and any driver license taken into possession under this section shall be forwarded immediately to the department by the officer.

(b) The report required by this section shall be made on forms supplied by the department.

(c) The report required by this section shall be accepted as prima facie evidence in all administrative reviews and hearings authorized by this part.

Section 55-10-904.

(a) Upon receipt of the report of the law enforcement officer, the department shall make the determination described in Tennessee Code Annotated, Section 55-10-902.

(b) If the notice of proposed revocation is not personally served on the person pursuant to section 55-10-905(a), it shall be mailed to the person at the address provided in the enforcement officer's report if such address differs from the address of record. The notice of proposed revocation is deemed delivered three (3) days after mailing.

(c) The notice of proposed revocation shall clearly specify the reason and statutory grounds for the revocation, the effective date of the revocation, the right of the person to request a hearing, and the procedure for requesting a hearing.

Section 55-10-905.

(a) Whenever an officer charges a person with a violation of Tennessee Code Annotated, Section 55-10-401, the officer, acting on behalf of the department, shall serve the notice of proposed revocation personally on such person.

(b) When the law enforcement officer serves the notice of proposed revocation, the officer shall take possession of any driver license issued by the state, which is held by the person. When the officer takes possession of a valid driver license issued by this state, the officer, acting on behalf of the department, shall issue a temporary permit, which is valid for forty-five (45) days after its date of issuance. If determination has not been made by the department under the provisions of Section 55-10-904 within forty-five (45) days of the initial seizure of license, the driver may apply for a restricted license, as provided for in Section 55-50-502.

(c) A copy of the completed notice of proposed revocation form, a copy of any completed temporary permit form, and any driver license taken into possession under this section, shall be forwarded within five (5) working days to the department by the officer.

(d) The department shall provide forms for notice of proposed revocation and for temporary permits to law enforcement agencies.

(e) Only law enforcement officers who have satisfactorily completed a recruit training program, approved by the Tennessee peace officers standards and training commission may act on behalf of the department by serving notice of

proposed revocation, taking possession of a driver license and issuing a temporary permit as authorized by this section.

Section 55-10-906.

(a) The license revocation shall become effective forty-five (45) days after the person has received the notice of proposed revocation as provided in Section 55-10-905 or 55-10-904(b).

(b) The period of license revocation for a violation of Tennessee Code Annotated, Section 55-10-401 shall be twelve (12) months.

(c) Persons who have no prior record of license revocation for a violation of Tennessee Code Annotated, Section 55-10-401 or a revocation entered in any other state for driving under the influence of an intoxicant shall be eligible for a restricted driver license as provided in Tennessee Code Annotated, Section 55-50-502, after a minimum revocation period of sixty (60) days.

(d) Where a license is revoked under this part and the person is also convicted on criminal charges arising out of the same occurrence for a violation of Tennessee Code Annotated, Section 55-10-401, both the revocation under this section and the revocation under Section 55-10-403, shall be imposed. The period of revocation for the criminal conviction shall commence as provided in Tennessee Code Annotated, Section 55-50-502(a)(1).

Section 55-10-907.

(a) The period of revocation specified by Section 55-10-906 is intended to be a mandatory period of revocation for a violation of Tennessee Code Annotated, Section 55-10-401. No license shall be restored under any circumstances and no restricted driver license shall be issued during the revocation period, except as provided in Section 55-10-906(c).

(b) No driving privilege may be restored until all applicable reinstatement fees have been paid and all requirements of Tennessee Code Annotated, Title

55, Chapter 12, have been satisfied. The restoration fee for this section is one hundred dollars (\$100).

(c) Any person who has received a notice of proposed revocation under Section 55-10-905 shall, prior to the return of any driver license taken pursuant to such section, be required to pay to the department of safety an administrative processing fee of fifty dollars (\$50.00).

Section 55-10-908.

(a) Upon receipt of the information provided by the law enforcement officer as required in Section 55-10-903(a), the department shall automatically conduct an administrative review and make a determination pursuant to Section 55-10-902.

(b) In such review, the department shall give consideration to all available information. If the department determines by a preponderance of the evidence that the person drove or was in actual physical control of a motor vehicle while the alcohol concentration in the person's blood or breath was one-tenth of one percent (0.10%) or more, the department shall sustain the order of revocation. If the evidence does not support such determination, the department must immediately rescind the order of revocation. The determination of the department upon administrative review is final unless a hearing is requested under Section 55-10-909.

(c) The department shall make a determination upon administrative review at least five (5) days prior to the effective date of the revocation order. If the department is unable to make a determination within the time limits specified, it shall stay the revocation pending such determination. If the department rescinds the revocation, the department shall return, by registered mail, return receipt requested, the person's driver license.

Section 55-10-909.

(a) Any person who has received a determination upon administrative review may, within twenty (20) days of receipt of the notice, make a written request for a hearing on forms provided by the department to the address provided on the form. If the person's driver license has not been previously surrendered, it must be surrendered at the time that request for hearing is made. A request for hearing does not stay the license revocation.

(b) The hearing shall be scheduled for a date within thirty (30) days of receipt of the request for a hearing. The hearing shall be held at the regional Highway Patrol headquarters closest to the location where the alleged violation of Tennessee Code Annotated, Section 55-10-401 occurred, unless the parties agree to a different location. The department shall provide a written notice of the time and place of the hearing to the party requesting the hearing at least ten (10) days prior to the scheduled hearing, unless the parties agree to waive this requirement.

(c) The presiding hearing officer shall be the commissioner or an authorized representative designated by the commissioner. The presiding hearing officer shall have authority to administer oaths and affirmations, to examine witnesses and take testimony, to receive relevant evidence, to issue subpoenas, take depositions, or cause depositions or interrogatories to be taken, to regulate the course and conduct of the hearing, and to make a final ruling on the issue.

(d) The sole issue at the hearing shall be whether by a preponderance of the evidence the person drove or was in actual physical control of a motor vehicle while the alcohol concentration in the person's blood or breath was one-tenth of one percent (0.10%) or more. If the presiding hearing officer finds the affirmative of this issue, the revocation order shall be sustained. If the presiding

hearing officer finds the negative of the issue, the revocation order shall be rescinded.

(e) The hearing shall be recorded. The decision of the presiding hearing officer shall be rendered in writing, and a copy shall be provided to the person who requested the hearing.

(f) If the person who requested the hearing fails to appear without just cause, the right to a hearing shall be waived, and the department's earlier determination shall be final.

(g) Witnesses under subpoena shall be entitled to the same fees as are now or may hereafter be provided for witnesses in other administrative hearings before the department and, unless otherwise provided by law or by action of the agency, the party requesting the subpoenas shall bear the cost of paying fees to the witnesses subpoenaed.

(h) The department of safety shall reimburse any governmental agency expenses incurred while testifying in hearings authorized by this section, when the department of safety subpoenas the governmental agency's representative.

Section 55-10-910.

(a) Within thirty (30) days of the issuance of the final determination of the department following a hearing under Section 55-10-909, a person aggrieved by the determination shall have the right to file a petition for judicial review in the chancery court of Davidson County. The filing of a petition for judicial review shall not stay the revocation order.

(b) The review shall be on the record, without taking additional testimony. If the court finds that the department exceeded its constitutional or statutory authority, made an erroneous interpretation of the law, acted in an arbitrary and capricious manner, or made a determination which is unsupported by the evidence in the record, the court may reverse the department's determination.

Section 55-10-911. The Tennessee Uniform Administrative Procedures Act, codified in Tennessee Code Annotated, Title 4, Chapter 5, applies to the extent it is consistent with proceedings under Sections 55-10-809 and 55-10-810 relating to the administrative hearing and judicial review.

Section 55-10-912. For the purpose of implementing the provisions of this part, the commissioner of safety is directed to apply for all applicable federal funding.

Section 55-10-913. The implementation and effectiveness of this part shall be subject to a mandatory review not later than four (4) years after it becomes a law. The review shall be conducted by the department of safety and shall include a survey of license revocations, citizen complaints, law enforcement personnel opinions, and an estimate of the effect of this part on reducing violations of Tennessee Code Annotated, Section 55-10-401.

Section 55-10-914. The provisions of this part shall only apply in counties having a population in excess of one hundred thousand (100,000) according to the 1990 federal census of population or any subsequent federal census.

SECTION 2. Tennessee Code Annotated, Title 55, Chapter 10, is amended by adding the following as a new Part 10:

Section 55-10-1001 . As used in this act unless the context clearly requires otherwise:

(1) "Driver license" means any license to operate a motor vehicle issued under Tennessee law;

(2) "License" means any driver license or any other license or permit to operate a motor vehicle issued under, or granted by, Tennessee law including:

(A) Any temporary license or instruction permit;

(B) The privilege of any person to drive a motor vehicle whether or not the person holds a valid license;

(C) Any nonresident's operating privilege as defined herein;

(3) "Nonresident's operating privilege" means the privilege conferred upon a nonresident by Tennessee law pertaining to the operation by that person of a motor vehicle, or the use of a vehicle owned by that person, in Tennessee;

(4) "Revocation" means the termination by formal action of the department or a court of a person's license or privilege to operate a motor vehicle on the highways, which terminated license or privilege shall not be subject to renewal or restoration except that an application for a new license may be presented and acted upon by the Tennessee department of safety after the expiration of the applicable period of time prescribed by this act; and

(5) "State" means a state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a province or territory of Canada.

(6) "Court" shall mean the general sessions court of the county where the alleged offense occurred.

Section 55-10-1002.

(a) It shall be a civil offense for any person to drive or be in physical control of a motor vehicle in the State of Tennessee while the alcohol concentration in the person's blood or breath is one-tenth of one percent (0.10%) or more.

(b) The general sessions court for the county where a person is arrested pursuant to Tennessee Code Annotated, Section 55-10-401 shall order the revocation of such driver's license upon a determination that the person drove or was in actual physical control of a motor vehicle while the alcohol concentration

in the person's blood or breath was one-tenth of one percent (O. 10%) or more.

For purposes of this part, alcohol concentration shall mean either grams of alcohol per one hundred (100) milliliters of blood or grams of alcohol per two hundred ten (210) liters of breath.

(c) Such court shall make a determination of these facts on the basis of the information provided by the law enforcement officer required by Section 55-10-1003, unless a hearing is requested by the defendant pursuant to Section 55-10-1005 of this part, in which case the court shall determine these issues at the time of the hearing. Such a determination shall be final unless an appeal is taken under Section 55-10-1009.

(d) Except as provided in Section 55-10-1007(d), the determination of these facts by the court is independent of the determination of the same or similar facts in the adjudication of any criminal charges arising out of the same occurrence.

Section 55-10-1003.

(a)(1) When a person has been arrested for a violation of Tennessee Code Annotated, Section 55-10-401 and has committed a civil offense under this part, the arresting officer shall, within five (5) working days or as soon as possible after receipt of the results of any chemical tests but not later than twenty (20) days, forward to the court a sworn civil warrant which shall include (1) information that adequately identifies the arrested person, (2) a statement of the officer's grounds for belief that the person violated this section, (3) a report of the results of any chemical tests which were conducted and that the breathalyzer, if used, was properly calibrated at the time of use or that the arrested person refused to consent to a test and (4) the date, time and place of a hearing (initial appearance, preliminary examination or trial) to be held before the court not later

than thirty (30) days after the date of the arrest. The law enforcement officer who arrests any person for violation of this § 55-10-401 shall seize the driver license and shall attach such license to the original warrant submitted to the court.

(2) Only law enforcement officers who have satisfactorily completed a recruit training program, approved by the Tennessee peace officers standards and training commission, may take possession of a driver license as authorized under this section.

(b) Any person whose driver license has been seized pursuant to this section shall, prior to such person's release, be given a Notice of Proposed License Revocation. Such Notice shall state that the person's driver license has been seized and is subject to revocation; that the person has a right to a hearing on the proposed revocation at the time of the general sessions court hearing on the underlying offense(s) charged pursuant to Tennessee Code Annotated, Section 55-10-401; that the person must request the hearing on the proposed revocation by notifying the court in writing either at the initial appearance on the underlying criminal charges held pursuant to Tennessee Rules of Criminal Procedures 5 or at any time within five (5) calendar days of the date of arrest; that if the person requests such a hearing and does not prevail on the issue of the driver license revocation, then the person must pay the costs of the hearing not to exceed seventy-five dollars (\$75); that if a hearing is not requested in accordance with this section then such hearing is deemed waived; that if the person does not request or waives a hearing, then the court will determine the issue of license revocation based solely upon the arresting officer's sworn warrant; and that if the person requests a hearing, then the court will issue a temporary license valid through the earlier of the date of the hearing or thirty (30) days.

(c) Any person whose driver license is seized pursuant to this section may request a hearing on the proposed license revocation, provided that such hearing is requested in writing either at the initial appearance on the underlying offenses charged pursuant to Tennessee Code Annotated, Section 55-10-401, held pursuant to Tennessee Rules of Criminal Procedures 5, or at any time within five (5) calendar days of the arrest. If a hearing is not requested within the time specified herein, it is deemed waived and the court shall determine the issue of license revocation based solely on the sworn warrant filed by the arresting officer.

(d) If a hearing is not requested in accordance Section 55-10-1003(c), it is the intent of the General Assembly that the court determine the issue of license revocation as soon as possible and within seven (7) days from the date upon which such hearing is waived. If the court determines, based upon the arresting officer's sworn warrant, that the person's driver license should be revoked under this section, then the court shall order that the license be revoked and shall notify the department of safety immediately.

A copy of the order of revocation shall be mailed to the defendant by the court at the defendant's address as ascertained at the time of the defendant's arrest. However, the failure of a defendant to receive a copy of the order shall have no effect on the revocation or on the deadline for filing on appeal under Section 9.

(e) The clerk of the court shall assign one (1) identifying case file number to the offense(s) charged pursuant to Tennessee Code Annotated, Section 55-10-401 to include any civil license revocation proceeding brought under this section. The clerk of the court shall file the warrant and retain the driver license submitted by the law enforcement officer until the court orders a revocation under

this act, at which time the license shall be sent with the abstract to the Department of Safety, or until the court orders that the license be returned to the arrested person. Such abstract shall be supplied by the Department of Safety.

(f) The warrant and the Notice of Proposed Revocation required by this act shall be made on forms designed to include the information required and shall be supplied by the Department of Safety to any law enforcement agency of the state.

Section 55-10-1004. The sworn warrant required by this act shall be accepted as evidence in all hearings authorized by this act and shall be considered self-proving unless controverted by the defendant. If the defendant requests a hearing and then does not appear at such hearing at the time scheduled, the court may render a decision on the sworn warrant alone as if such hearing were waived under Section 55-10-1003 of this part.

Section 55-10-1005.

(a) If a hearing is requested pursuant to of Section 1003(c) of this part, then the hearing shall be conducted at the same time as the first full hearing in general sessions court (the preliminary examination or trial) on the underlying offenses charged pursuant to Tennessee Code Annotated, Section 55-10-401. In the event that the general sessions court proceedings on the underlying offense(s) under Section 55-10-401 are waived to criminal court, then a hearing on the issue of license revocation which has been properly requested under Section 55-10-1003 of this part shall be held at the time that the preliminary examination would have been conducted on such underlying offenses pursuant to Tennessee Rules of Criminal Procedure 5.1.

(b) If the defendant requests a hearing and does not prevail, such defendant shall pay the court costs associated with the determination of the

issues at the hearing, not to exceed seventy-five dollars (\$75.00), in addition to the other fees which may apply.

(c) The sole issue at the hearing on the revocation shall be whether the defendant drove or was in actual physical control of a motor vehicle while having an alcohol concentration of one-tenth of one percent (0.10%) or more. The standard of proof shall be the preponderance of the evidence. If the judge finds the affirmative of this issue, the judge shall order a revocation of the defendant's driver license in accordance with Section 55-10-1007. If the judge finds the negative of the issue, the judge shall order reinstatement of the defendant's driver license without costs to the defendant.

(d) The hearing shall be recorded. The decision of the judge shall be rendered in writing and a copy of the order shall be provided to the defendant. If the court orders the revocation of the defendant's license then the Department of Safety shall be notified immediately.

Section 55-10-1006.

(a) Any person whose driver license is seized pursuant to this section and who requests a hearing on the proposed license revocation in a timely manner under Section 55-10-1003(c) may apply to the court for a temporary license. The Department of Safety shall include a "temporary license" section in the Notice of Proposed License Revocation form which it creates pursuant to Section 55-10-1003(f). The court may execute the temporary license by appropriately filling out the temporary license section of the Notice of Proposed Revocation form referred to in Section 55-10-1003(b). The temporary license shall be valid only through a date certain set by the court, which shall be either (1) the date upon which the revocation hearing is set or (2) thirty (30) days after such application is made, whichever time period is shorter.

(b) If the defendant's hearing date on the revocation has not been conducted by the court under the provisions of Section 55-10-1005 within thirty (30) days of the issuance of the temporary license, and such hearing has not been conducted through no fault of the defendant, the defendant may apply to the court for extension of the temporary driver license issued pursuant to this section and the temporary license shall be amended to be valid through the date of the hearing. A temporary driver license shall not be issued to any person who is under an outstanding suspension, revocation or cancellation at the time of the arrest.

Section 55-10-1007.

(a) The license revocation shall become effective on the date it is ordered by the court.

(b) The period of the license revocation under this section shall be as follows:

(1) The period shall be three (3) months if the person's driving record shows no prior convictions for driving under the influence of an intoxicant during the immediately preceding five (5) years.

(2) The period of revocation shall be one (1) year if the person's driving record shows one (1) or more convictions for driving under the influence of an intoxicant during the immediately preceding five (5) years.

(3) A person who has no prior record for driving under the influence of an intoxicant and who submits to a chemical test in accordance with Section 55-10-406, shall be eligible for a restricted driver license as provided in Section 55-50-502, after a minimum revocation period of thirty (30) days. A person who refuses to submit to a test shall

not be eligible for a restricted driver license as provided in Section 55-50-502, during the three (3) month revocation period.

(4) A person who has one (1) or more prior convictions for driving under the influence of an intoxicant alcohol during the immediately preceding five (5) years shall not be eligible for a restricted license during the person's revocation period.

(c) Where a license is revoked under this part and the person is also convicted on criminal charges arising out of the same occurrence for a violation of Section 55-10-401, both the revocation under this act and the revocation under Section 55-10-401, shall be imposed. The period of revocation for the criminal conviction shall commence as provided in Tennessee Code Annotated, Section 55-50-502(a)(1).

(d) If a person is acquitted of charges under Section 55-10-401, if a nolle prosequi is taken, or if such charges are reduced or otherwise disposed of in favor of the defendant, the court shall immediately order the reinstatement of the driver license and shall notify the department of safety immediately.

Section 55-10-1008.

(a) The periods of revocation specified in this part are intended to be minimum periods of revocation for the described conduct. No license shall be restored under any circumstance and no restricted driver license shall be issued except as specified in this part during the revocation period. Provided, however, if any criminal charges arising out of the same incident have had final determination rendered by the court, the court may order a restricted license under the provisions of Section 55-10-403(d).

(b) No driving privilege may be restored until all applicable court costs and reinstatement fees have been paid and all requirements of Tennessee Code

Annotated, Title 55, Chapter 12, have been satisfied. Any person whose license is suspended pursuant to this act shall be required to pay the Department of Safety an administrative processing fee of ten dollars (\$10.00).

(c) Any person who has received a warrant and/or a notice of proposed license revocation under this part shall, prior to the return of any driver license taken pursuant to this act, be required to pay to the clerk of the sessions court a fee of twenty-five dollars (\$25), which shall be in addition to other fees allowed to the court clerk by law, to be assessed by the court upon a finding that the driver license should be revoked under the terms of this act. The person seeking reinstatement shall provide the department of safety with a certification from the court clerk that all applicable court costs have been paid prior to reinstatement of the driver license.

Section 55-10-1009.

(a) Within thirty (30) days of the issuance of an order of revocation by the court under this act, a person aggrieved by the determination shall have the right to file a petition for review in the court having jurisdiction of appeals of criminal cases from the general sessions court in such county where the offense occurred. The filing of the petition for review shall not stay the revocation order. The clerk of the court shall file a certified copy of the record with the court having jurisdiction of the appeal within ten (10) days after having received notice that such an appeal has been filed.

(b) The review shall be on the record, without taking additional testimony. The standard to be used by the court having jurisdiction of the appeal in deciding whether the general sessions court's determination should be affirmed or reversed is whether there is or is not a preponderance of evidence to support such determination.

Section 55-10-1010. The implementation and effectiveness of this act shall be subject to a mandatory review not later than two (2) years after it becomes a law. The review shall be conducted by the department of safety and shall include a survey of license revocations, citizen complaints, law enforcement personnel opinions, and an estimate of the effect of this act on reducing driving while intoxicated and accidents resulting therefrom. Such review shall be presented to the transportation and judiciary committees of the House of Representatives and the Senate.

Section 55-10-1011. The provisions of this part shall only apply in counties with a population of one hundred thousand (100,000) or less according to the 1990 federal census or any subsequent federal census.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect on January 1, 1999, the public welfare requiring it.